

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MEDIACOM MINNESOTA LLC)	CSR 6338-E
)	
)	
Petition for Determination of Effective)	
Competition in Hutchinson (MN0078), Litchfield)	
(MN0050) and Hassen Valley, Minnesota)	
(MN0985))	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 2007

Released: July 23, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Minnesota LLC (“Mediacom”) has filed with the Commission a petition pursuant to Section 76.7, 76.905(b)(4) and 76.907 of the Commission's rules for a determination of effective competition in the Cities of Hutchinson, Litchfield, and Hassen Valley, Minnesota (collectively the “Franchise Areas”). Mediacom alleges that its cable system serving the Franchise Areas are subject to effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(4) of the Communications Act¹ and the Commission's implementing rules,² and therefore is exempt from cable rate regulation. Mediacom claims the presence of effective competition in the Franchise Areas stems from the competing cable services provided by Hutchinson Telephone Company (“Hutchinson Telephone”) in the Franchise Areas. Hutchinson Telephone filed comments in support of Mediacom’s petition and request for relief. No oppositions were filed. Finding that Mediacom is subject to effective competition in the listed Franchise Areas, we grant the petition.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not

¹ 47 U.S.C. § 543(a)(4) & 543(l)(1)(4).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

exist with evidence that effective competition is present within the relevant franchise area.⁵ Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a local exchange carrier (“LEC”) or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁶

3. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.⁷ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.⁸

III. DISCUSSION

4. Mediacom operates a cable television system in the Franchise Areas for which it seeks a determination of effective competition and, having been assigned the Community Unit Identification (CUID) numbers shown in the caption, qualifies as the incumbent cable operator within the Franchise Areas for purposes of the “LEC” effective competition test at issue in this proceeding. Mediacom provided information showing that the State of Minnesota granted a certificate for the provision of telephone exchange and local exchange access service to Hutchinson Telephone in the Franchise Areas.⁹ Therefore, Hutchinson Telephone qualifies as a LEC for purposes of the LEC effective competition test.¹⁰

5. Hutchinson Telephone received a local cable franchise from Litchfield, Minnesota in 1999 and Hutchinson, Minnesota in 2000 authorizing it to provide cable programming service throughout the Franchise Areas.¹¹ Mediacom demonstrated that Hutchinson Telephone’s Franchise Areas are essentially the same as that of its own; that the Hutchinson Telephone cable plant covers most of the respective Franchise Area; and that Hutchinson Telephone’s cable plant substantially overlaps Mediacom’s service area.¹² In addition to holding a franchise for the provision of cable service within

⁵ See 47 C.F.R. §§ 76.906 & 907.

⁶ 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the “LEC” effective competition test.

⁷ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“Cable Reform Order”).

⁸ *Id.*

⁹ Petition at 2 & Exhibit A.

¹⁰ See 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

¹¹ Petition at 4 & Exhibit F. The City of Hutchinson encompasses Hassen Valley. Hutchinson serves as Hassen Valley’s local franchising authority.

¹² Petition at 3 & Exhibits C & D.

the Franchise Areas, Hutchinson Telephone has distributed press releases, marketing materials, and engaged in local advertising within the Franchise Areas so that potential cable subscribers in the Franchise Areas are reasonably aware of the availability of its cable services and need only contact Hutchinson Telephone to obtain service.¹³

6. The Hutchinson Telephone marketing materials show that its cable systems offer over 60 channels of video programming that includes non-broadcast programming services such as MSNBC, CNN, and ESPN, as well as a complement of several local television broadcast stations.¹⁴ Based on this record, we find that the Hutchinson Telephone complement of programming services compares with the programming available on Mediacom's systems¹⁵ and is sufficient to satisfy this aspect of the LEC effective competition test.¹⁶ Mediacom also provided evidence that there are no regulatory, technical, or other impediments to Hutchinson Telephone's provision of service within the Franchise Areas, and that Hutchinson Telephone is able to provide cable service that substantially overlaps Mediacom's service.¹⁷ Hutchinson Telephone asserts that it is both a local exchange carrier and a video services provider, and that Mediacom has accurately represented that effective competition exists within the Franchise Area.¹⁸ Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable systems serving the Franchise Areas are subject to effective competition.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Mediacom Minnesota LLC for a determination of effective competition in Hutchinson, Hassen Valley, and Litchfield, Minnesota **IS HEREBY GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Mediacom Minnesota LLC **ARE REVOKED**.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹³ *Id.* at 4-5 & Exhibit E.

¹⁴ *Id.* at 6 & Exhibit G.

¹⁵ *Id.* at 6 & Exhibit H.

¹⁶ *See* 47 C.F.R. § 76.905(g).

¹⁷ Petition at 3 & Exhibits C & D.

¹⁸ Hutchinson Telephone Comments at 1-3.

¹⁹ 47 C.F.R. § 0.283.